THE CITY OF ASPEN

Request for Proposals

Project Number 2017-063
Public Outreach Services associated with Improving Resiliency of Aspen's Integrated Water System

Due Date: 2 PM, May 30, 2017

130 South Galena Street
Aspen, CO 81611
(970)920-5079
www.aspenpitkin.com
Rebecca.Hodgson@cityofaspen.com

REQUEST FOR PROPOSALS

Sealed proposals will be received by the City of Aspen Purchasing Department through the Bidnet Direct website, www.bidnetdirect.com, until 2:00p.m., May 30, 2017, at which time the proposals will be opened and reviewed, for the following City of Aspen project:

Public Outreach Services associated with Improving Resiliency of Aspen's Integrated Water System.

The project will include, but is not limited to: professional public outreach services to discuss alternatives for improving Aspen's water resiliency. The City of Aspen is seeking professional services by a consultant or consultant team (referred to herein as Vendor) to assist in gathering public input and disseminating information about Aspen's integrated water system. This effort will utilize a Technical Advisory Work Group (TAWG), and will include extensive public outreach and input.

Complete proposal packages are available to download or from www.bidnetdirect.com Vendors must be registered to view the bid packages. There is no charge to register. Call 1-800-835-4603 if you need assistance registering.

To submit, an electronic copy of the Proposal as a PDF or Word file, must uploaded to the Bidnet Direct website, www.bidnetdirect.com. The file name must include the City's project number and offeror's name.

The City reserves the right to reject any or all Proposals or accept what is, in its judgment, the Proposal which is in the City's best interest. The City further reserves the right, in the best interests of the City, to accept a late submittal or to waive any technical defects or irregularities in any and all Proposals submitted.

Pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-200.1 (CORA), any and all of the documents that are submitted to the City of Aspen may be deemed public records subject to examination and inspection by third parties. The City of Aspen reserves the right, at its sole discretion, to release for inspection or copying any document, plan, specification, proposal or other writing submitted pursuant to this request.

Discussion may be conducted with responsible Offerors who submit Proposals determined to be reasonably susceptible to be selected for award for purpose of clarification to assure full understanding of, and responsiveness to the solicitation requirements.

In addition to price, the criteria set forth in the Instruction to Offerors and any specific criteria listed below, may be considered in judging which Proposal is in the best interests of the City: Related experience; project understanding; overall effectiveness of proposal; and ability to meet timeline.

BY ORDER OF THE CITY OF ASPEN, COLORADO

Rebecca Hodgson, Purchasing

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1.0 Introduction

The purpose of this Request for Proposals (RFP) is to solicit professional public outreach services associated with improving the resiliency of Aspen's integrated water system. The City of Aspen is seeking professional services by a consultant or consultant team (referred to herein as Vendor) to assist in gathering public input and disseminating information about Aspen's integrated water system. This effort will utilize a Technical Advisory Work Group (TAWG), and will include extensive public outreach and input. Work associated with this RFP is desired to be completed by February 1, 2018.

1.1 Project Description and Background

Aspen's Water Utility is charged with ensuring the City has a legal, safe and reliable water system to meet all of its customers indoor and outdoor uses, now and in the future. Since 1965, Aspen's integrated water system has included water rights for reservoirs on Maroon and Castle Creeks. The lack of raw water storage has long been recognized as a system vulnerability. The City of Aspen has a responsibility to identify and mitigate this known risk by implementing a long-term water plan that ensures sufficient water for a reasonable range of possible futures facing Aspen. At this time, reservoirs on Maroon and Castle Creek are identified in Aspen's long-range planning as necessary system improvements to meet water management requirements. Because these reservoirs would likely have large social and environmental impacts, Aspen City Council would like to explore other alternatives to increase the resiliency of the integrated water system. City Council directed Staff to engage citizens and stakeholders in discussing alternatives for meeting Aspen's long-range water needs (see Attachment C for Resolution 141 Series of 2016).

Aspen retained the services of the Consensus Building Institute (CBI) to engage the community and stakeholders about concerns that they would like to discuss and ways in which they would like to engage with the City. CBI's report is attached to this RFP as Attachment D.

CBI recommended a collaborative process that includes a Technical Advisory Working Group (TAWG) to assist the City in an effective outreach program. In addition, they recommended a robust public process to engage the community. **It is noted that CBI recommended a 1-year engagement process for the TAWG. Work associated with this RFP is desired to be completed by February 1, 2018. If it is determined that additional input is required through the collaborative process, then an additional SOW will be developed.**

In its assessment, CBI recommended that the collaborative process include 1) a Technical Advisory Working Group (TAWG) and 2) a robust, topic-driven public engagement.

The Technical Advisory Working Group will consist of stakeholders appointed by the City Council. The role of the TAWG will be to engage with the City in detailed discussions and provide input on technical aspects of the City's integrated water system.

In addition, the City wishes to engage the public through many venues to solicit the community's concerns about its water future, gather ideas for inclusion in the integrated water system, and educate the public on the issues being studied. It is desired that the public process be designed so that participants can focus on specific issues in an organized and efficient manner.

This effort to gather information for the update of the Water Plan will require discussion of the following proposed topics:

- **Water System Demand**

This topic focuses on refining the projection of the future water requirements of the community. Input will be needed on specific topics, such as: Population Trends, Conservation, Environmental Considerations, Economic Impacts, Climate Change, Natural Disasters and System Operations

- **Water Availability and Risk**

The City will discuss levels of risk as identified by its consultant, Headwaters Corporation. Headwaters Corporation is currently developing a tool using probability distributions to determine the City's greatest areas of vulnerability. It is anticipated that this tool will be used to discuss risk mitigation with the TAWG and the general public.

- **Water Supply Alternatives**

A large outreach effort will be undertaken to collect alternatives for securing Aspen's water future. Interested parties will be invited to submit ideas. This is an opportunity to think in and out of the box for solutions. Creative, innovative, industry trending and implementable concepts are encouraged.

- **Alternative Reservoir Locations**

A large outreach effort will be undertaken to identify alternative locations for the Maroon Creek Reservoir and Castle Creek Reservoir. Interested parties will be invited to submit ideas.

- **Alternatives Evaluation and Development**

It is anticipated that the TAWG will provide input on criteria, constraints and weighting factors to use when selecting the best alternative, or group of alternatives, to meet the needed water system improvements identified during the risk analysis. A screening matrix will be developed to determine which alternatives are viable. Viable alternatives will be identified and ranked according to weighted scores.

2.0 RFP Process

2.1 Communication

Questions must be posted on the Bidnet Direct website, www.bidnetdirect.com. Answers are posted online for all Offerors to review and consider. It is the Vendor's responsibility to check the website for Q&As, addendums, and other important information.

Vendors may contact Rebecca Hodgson at Rebecca.Hodgson@cityofaspen.com or 970-920-5079 for questions regarding the procurement process or uploading proposals.

2.2 Proposal Submission

Electronic submission is to be uploaded on the Bidnet Direct website, www.bidnetdirect.com. The electronic submission must be compiled into a single pdf or Word document. The name of the document must contain the City project number and firm's name.

The deadline for submitting responses to this RFP is 2:00pm, May 30, 2017.

2.3 Schedule

The proposal, evaluation and selection schedule is as follows:

Item	Milestone Dates
Final Questions Due	05/17/2017
Proposals Packages Due by 2:00 PM	**05/30/2017**
Interviews (if necessary)	06/06/2017
Notification of Selection	06/09/2017
Signed Contract Due	06/16/2017
City Council Approval	06/26/2017
TAWG and public meetings	07/01/2017 – 12/31/2017
City Council Presentation(s)	TBD
Final Recommendations and next steps	2/01/2018

2.4 Selection Criteria

The criteria for selection shall include but may not be limited to the following:

- Team Experience: 35%
  - Team organization
  - Team experience (public processes)
  - Team experience (water related experience, especially Colorado municipal water issues)

- Project understanding: 25%
  - Understanding of Project Scope
  - Sensitivity to local water issues
  - Local connection and responsiveness, especially for meeting facilitator

- Overall effectiveness of process: 25%
  - Robust engagement strategy
  - Creative and innovative forms of engagement
  - Clarity of process design
  - Communication tools

- Ability to meet timeline: 5%
  - Demonstration of team commitment to project
  - Ability to provide appropriate resources to meet project timeline

- Price: 10%

The City reserves the right to reject any or all Proposals or accept what is, in its judgment, the Proposal which is in the City's best interest. The City further reserves the right, in the best interests of the City, to accept a late submittal or to waive any technical defects or irregularities in any and all Proposals submitted.

Discussion may be conducted with responsible offerors who submit Proposals determined to be reasonably susceptible to be selected for award for purpose of clarification to assure full understanding of, and responsiveness to the solicitation requirements.

3.0 Scope of Work

The Scope of Work associated with this RFP includes the Public Outreach component desired to solicit input and promote collaboration and transparency as the City develops innovative strategies for increasing the resiliency of its integrated water system. The City of Aspen requires a Vendor to assist in the development of its collaborative process, implementation of the process and development of recommendations. Work Items will include:

Task 1: Process Design – Vendor will offer support and expertise in creating a public participation process that will involve the community, interested parties, staff and other technical consultants. The assessment provided by CBI (attached) should be used as a starting point.

Task 1 Deliverables:

- Help Staff identify important community groups (Rotary, etc.) so Staff and Vendor can do direct outreach with them in the form of a speakers series.
- Help Staff identify groups to reach-out to for public process education who may not seek out involvement in the update. When these groups are identified, the Vendor should help Staff provide educational components tailored specifically for these groups.
- Work with City Council, staff and project participants to build consensus around best alternatives for improving Aspen's water resiliency.

Task 2: Call to Participate: The Vendor will assist Staff in a "call to participate" to parties interested in collaborating with the City to increase the resiliency of its integrated water system. Generate interest and promote community participation. Develop methods to facilitate the effectiveness of the Technical Advisory Working Group(TAWG). Develop and launch a project website that provides transparency in the process, encourages broad public participation, archives files, and shares project milestones and updates

Task 2 Deliverables:

- News releases, email alerts, social media and other methods of communication
- Facilitate formation of the TAWG
- Develop and launch a website for participation, communication and process updates
- Implement process for engaging the public

Task 3: Meeting Facilitation – Vendor will facilitate TAWG meetings and other meetings as identified during the Process Design. **Aspen reserves the ability to select a local facilitator to assist with meeting facilitation. Address in your proposal how a local facilitator could best be integrated into your project team and the associated cost implications.**

Task 3 Deliverables:

- Work with staff to design a structured process to include timelines, meeting agendas and specific outcomes for each meeting.
- In-person facilitation of meetings
- Development and procurement of materials, exhibits, etc. for meetings
- Summary memos for each meeting
- Update website and outward communication of TAWG progress

Task 4: Communications – Vendor will prepare outreach materials for participants, stakeholders, policy makers and media.

Task 4 Deliverables:

- Vendor will create formats for public outreach, including design of interactive website and other online formats, invitations to participate, surveys and media alerts.
- Creative ideas are encouraged for the engagement of a diverse group of community members and stakeholders.
- System for tracking participant responses and participation.
- At least three in-person meetings with City Council to present recommendations and findings.

Task 5: Public Relations Expertise – Vendor will provide team member(s) with deep experience in advising staff and policy makers on presenting technical information to the public in a relatable manner. It is preferable that this experience include discussion of municipal water topics.

Task 5 Deliverables:

- Provide input into the process design and implementation
- Guide project messaging
- On-going support, to include meetings with City staff and policy-makers

Task 6: Recommendations and Findings – Vendor will prepare three reports throughout the project

Task 5 Deliverables:

- Report One: Summary of TAWG Findings and Public Process
- Report Two: Summary of Alternatives Analysis
- Report Three: Final Recommendation at the end of the project summarizing key issues, items of consensus and policy recommendations.

4.0 Proposal Format

All proposals will follow the format as outlined below. Failure to do so may result in disqualification.

Section 1 - Introduction	Introduce companies and staff to be included as the project team. Include resumes, certifications, awards, and education. Include contact person name, phone number and email address for purposes of this procurement process
Section 2 - Qualifications	List previous experience of project team members for this specific type of work. List previous experience of project team

	members with Colorado specific water projects.
Section 3 - Proposal	Explain proposed Approach and Process to be used to attain the objectives of this request in depth. Include any additional steps or services you would propose to make this a more comprehensive process, or a more useful final deliverable. Deviations from the Scope of Work outlined above are acceptable if they will produce a more effective, innovative, and/or engaging process.
Section 4 - Timeline	Completion schedule including milestones and deliverable submission dates. Demonstration of team's commitment to the project and ability to provide resources to meet project timeline.
Section 5 – Fee Proposal	Outline the estimated total budget based on the proposed scope of services, detailing the budget for each portion of the project, and specifying rates for various individuals and/or entities. Also include the fee schedule for completion of additional services if additional services were to be requested.
Section 6 – References	Include a minimum of five references that include project name, year work completed, contact name, phone number and email address.

5.0 Legal

5.1 The City reserves the right to reject any or all Proposals or accept what is, in its judgment, the Proposal which is in the City's best interest. The City further reserves the right, in the best interests of the City, to accept a late submittal or to waive any technical defects or irregularities in any and all Proposals submitted.

5.2 Pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-200.1 (CORA), any and all of the documents that are submitted to the City of Aspen may be deemed public records subject to examination and inspection by third parties. The City of Aspen reserves the right, at its sole discretion, to release for inspection or copying any document, plan, specification, proposal or other writing submitted pursuant to this request.

5.3 In order to fully understand the legal parameters of the City's procurement process and contractual requirements, Respondents must review Exhibit A *Instructions for Offerors of Professional Services* and Exhibit B *Professional Services Agreement*.

5.4 By participating in the City's procurement process, you are agreeing to the terms and conditions of the procurement process and the legal parameters of doing business with the City without change.

6.0 Exhibits

The following files are attached for your use and reference as needed to properly respond to the RFP request:

- Exhibit A – Instructions to Offerors of Professional Services
- Exhibit B – Professional Services Agreement
- Exhibit C – City of Aspen Resolution 141, Series of 2016
- Exhibit D – CBI Consensus Assessment

THE CITY OF ASPEN
INSTRUCTIONS TO OFFERORS
OF PROFESSIONAL SERVICES

1. The City of Aspen has advertised to invite Professionals to submit sealed Proposals as more fully described in the Request for Proposals. The following instructions have been prepared to assist Offerors in the preparation of their Proposals. These instructions may be altered by the City whenever it is deemed necessary in the best interests of the City.

2. The Contract Documents for this project shall consist of the following documents:

    A. Request for Proposals (Public Notice and Letters to Potential Offerors).
    B. Instructions to Offerors.
    C. Addenda, if any.
    D. Proposal submitted by Offeror.
    E. Proposal Bond Forms, if any.
    F. Qualification Form, if any.
    G. Notice of Award.
    H. Agreement.
    I. Scope of Work, if not set forth in the Request for Proposals.
    J. Notice to Proceed.

3. Information contained in the Contract Documents, as completed during the contract award process, shall be the basis for the Proposals, and nothing shall be deemed to change or supplement this basis except for written revisions to the above documents issued by the City of Aspen.

4. The City reserves the right to reject any or all Proposals or accept what is, in its judgment, the Proposal which is in the best interest of the City's. The City further reserves the right, in the best interests of the City, to waive any technical defects or irregularities in any and all Proposals submitted, and to negotiate contract terms with the Successful Offeror, and the right to disregard all nonconforming, nonresponsive or conditional Proposals. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

5. The cost of proposal preparation shall be borne solely by the persons or entities submitting proposals.

6. The following procedures or steps shall be followed after the issuance or publication of Request for Proposals:

A. Reference is made to the Request for Proposals to determine if a pre-Proposal conference will be scheduled, and if so, where and when. If a pre-Proposal conference is scheduled, attendance at the pre-Proposal conference is mandatory unless prior authorization is given by the City. The costs of attendance at a pre-Proposal conference shall be borne entirely by the Offeror.

B. Reference is made to the Request for Proposals to determine how complete Proposal Packages may be obtained.

C. Before submitting a Proposal, each Offeror must (a) examine the Contract Documents thoroughly, (b) visit the site, if any, to familiarize her/himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize her/himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect costs, progress or performance of the Work; (d) familiarize her/himself with the unique weather conditions of the City of Aspen and surrounding area that may affect costs, progress or performance of Work; and (e) study and carefully correlate Offeror's observations with the Contract Documents.

D. Reference is made to the Request for Proposals for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which have been relied upon by the City of Aspen or a consultant in preparing any Drawings or Specifications. These reports are not guaranteed as to accuracy or completeness, nor are they part of the Contract Documents. Before submitting her/his Proposal each Offeror will, at her/his own expense, make such additional investigations and tests as the Offeror may deem necessary to determine her/his Proposal for performance of the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

E. Reference is made to the Request for Proposals to determine the place, date, and time for delivering sealed Proposals for this project.

F. Proposals shall be submitted at the time and place indicated in the Request for Proposals and shall be included in an opaque sealed envelope, marked with the Project title and name and address of the Offeror and accompanied by the Proposal Security referenced below and other required documents. If the Proposal is sent through the mail or other delivery system the sealed envelope shall be enclosed in a seperate envelope with the notation "PROPOSAL ENCLOSED" on the face thereof. Proposals submitted by

facsimile machine (FAX) or email shall not be accepted or considered.

G. Reference is made to the Request for Proposals to determine if Proposal Security shall be required for this project. If a Proposal Security is required then each proposal must be accompanied by Proposal Security made payable to the City of Aspen, in an amount of five percent (5%) of the maximum Proposal price and in the form of a certified or bank check or a Proposal Bond (on form attached, if a form is prescribed) issued by a Surety.

The Proposal Security of the Successful Offeror will be retained until such Offeror has executed the Agreement and furnished the required Payment and Performance Bonds, if any are required by the Supplemental General Conditions, whereupon it will be returned; if the Successful Offeror fails to execute and deliver the Agreement and furnish the require Performance and Payment Bonds, if any are required, within fifteen (15) days of the Notice of Award, the City of Aspen may annul the Notice of Award and the Proposal Security of that Offeror shall be forfeited. The Proposal Security of any Offeror whom the City of Aspen believes to have a chance of receiving the award may be retained by the City of Aspen until the earlier of the seventh day after the "effective date of the Agreement" (which term is defined in the General Conditions) or the sixty first (61) day after the Proposal opening. Proposal Security of other Offerors will be returned within seven (7) days of the Proposal opening.

H. Reference is made to the Request for Proposals for any Proposal Forms that may be required to be completed as part of the Proposal. Proposal Forms, if any are required, must be completed in ink or by a printer/typewriter. The Proposal price must be stated in words and numerals; in case of a conflict, words will take precedence. Proposals by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature. Proposals by partnerships must be executed in the partnership named and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

I. Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of Proposals. If, within twenty four (24) hours after Proposals are opened, any Offeror files a duly signed written notice with the City of Aspen

and promptly thereafter demonstrates to the reasonable satisfaction of the City of Aspen that there was a material and substantial mistake in the preparation of her/his Proposal, that the Offeror may withdraw her/his Proposal and the Proposal Security will be returned. Thereafter that Offeror shall be disqualified from submitting a Proposal.

J. At the place, date and time fixed for opening Proposals, all Proposals received prior to that time shall be opened and reviewed. All Proposals shall remain open for a period of thirty (30) days, but the City may, in its sole discretion, release any Proposal and return the Proposal Security prior to that date.

K. The City shall then evaluate each Proposal in the best interests of the City of Aspen. The proposals shall be evaluated to determine which are the most advantageous to the City of Aspen taking into consideration price, the evaluation factors set forth at Section 3-14(f) of the Aspen Municipal Code, and any factors set forth in the Request for Proposals.

L. Prior to accepting a Proposal, the City may decide to interview one or more Offerors to negotiate final contract terms for inclusion in the Agreement.

M. To demonstrate qualifications to perform the Work, each Offeror must be prepared to submit within five (5) days of a request, financial data, previous experience or evidence of authority to conduct business in the state of Colorado. Notwithstanding any language to the contrary contained in any Request for Proposals, professionals shall not be required to divulge any information they deem to be confidential regarding previous clients, work performed, or cost of said previous work. The request, if any, for financial data is intended solely to help assess the professional's capacity and qualifications to work for the City.

N. Upon determining the successful Offeror, the City of Aspen shall send to the Successful Offeror a Notice of Award notifying the recipient of the City's acceptance of the Offeror's Proposal, subject to the City Manager or City Council approval of the Contract Documents. The Notice of Award shall also forward to the presumptive Successful Offeror three (3) unexecuted copies of the Agreement with instructions to execute and return the same to the City within ten (10) days or risk having their Proposal declared abandoned. If the proposed Agreement shall be for an amount in excess of $25,000.00, the City Council at its next regularly scheduled meeting following receipt by the City of the duly executed copies of the Agreement shall be asked to consider approval of the Agreement and authorize the Mayor of the City of Aspen to execute the same. If the proposed Agreement shall be in an amount equal to

or less than $25,000.00 the City Manager shall be asked to consider approval of the Agreement by executing the same.

O. Upon receipt of all documents required by the Notice of Award and upon approval of the Agreement by the City Council or City Manager, the Successful Offeror shall be sent a Notice to Proceed along with a copy of the Agreement duly executed by the City Manager or Mayor of the City of Aspen.

7. All purchases of supplies, construction or building materials shall not include Federal Excise Taxes or Colorado State or local sales or use taxes. The City of Aspen's State of Colorado tax identification number is 98-04557. The City of Aspen's Federal Tax Identification Number is 84-6000563.

8. There are specific indemnity and insurance requirements which the Successful Offeror must comply with prior to the start of Work for this project. These requirements are set forth in detail in the Agreement.

9. The submission of a Proposal will constitute an incontrovertible representation by the Offeror that he has complied with every requirement of these instructions and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

10. Reference is made to the Request for Proposals for the identity of the City of Aspen's project manager(s) who will coordinate all aspects of the selection process. All questions about the meaning or intent of the Contract Documents shall be submitted to the project manager(s) in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the project manager(s) as having received a Proposal Package. Questions received less than ten (10) days prior to the date of Proposal openings may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

11.. By submitting an offer or bid, Professional certifies and represents that at this time:

(i) Professional shall confirm the employment eligibility of all employees who are newly hired for employment in the United States; and

(ii) Professional has participated or attempted to participate in the Basic Pilot Program in order to verify that it does not employ illegal aliens.

The City of Aspen

CITY OF ASPEN STANDARD FORM OF AGREEMENT V 2009

PROFESSIONAL SERVICES

City of Aspen Project No.: _____.

AGREEMENT made as of _____ day of _____, in the year _____

BETWEEN the City:

The City of Aspen
c/o _____
130 South Galena Street
Aspen, Colorado 81611
Phone: (970) 920-5079

Contract Amount:

Total: $_____

If this Agreement requires the City to pay an amount of money in excess of $25,000.00 it shall not be deemed valid until it has been approved by the City Council of the City of Aspen.

City Council Approval:

Date: _____

Resolution No.:_____

And the Professional:

_____
c/o _____
_____
_____
Phone: _____

For the Following Project:

_____

Exhibits appended and made a part of this Agreement:

Exhibit A: Scope of Work.
Exhibit B: Fee Schedule.

The City and Professional agree as set forth below.

1. Scope of Work. Professional shall perform in a competent and professional manner the Scope of Work as set forth at **Exhibit A** attached hereto and by this reference incorporated herein.

2. Completion. Professional shall commence Work immediately upon receipt of a written Notice to Proceed from the City and complete all phases of the Scope of Work as expeditiously as is consistent with professional skill and care and the orderly progress of the Work in a timely manner. The parties anticipate that all Work pursuant to this Agreement shall be completed no later than _____. Upon request of the City, Professional shall submit, for the City's approval, a schedule for the performance of Professional's services which shall be adjusted as required as the project proceeds, and which shall include allowances for periods of time required by the City's project engineer for review and approval of submissions and for approvals of authorities having jurisdiction over the project. This schedule, when approved by the City, shall not, except for reasonable cause, be exceeded by the Professional.

3. Payment. In consideration of the work performed, City shall pay Professional on a time and expense basis for all work performed. The hourly rates for work performed by Professional shall not exceed those hourly rates set forth at **Exhibit B** appended hereto. Except as otherwise mutually agreed to by the parties the payments made to Professional shall not initially exceed the amount set forth above. Professional shall submit, in timely fashion, invoices for work performed. The City shall review such invoices and, if they are considered incorrect or untimely, the City shall review the matter with Professional within ten days from receipt of the Professional's bill.

4. Non-Assignability. Both parties recognize that this Agreement is one for personal services and cannot be transferred, assigned, or sublet by either party without prior written consent of the other. Sub-Contracting, if authorized, shall not relieve the Professional of any of the responsibilities or obligations under this Agreement. Professional shall be and remain solely responsible to the City for the acts, errors, omissions or neglect of any subcontractors' officers, agents and employees, each of whom shall, for this purpose be deemed to be an agent or employee of the Professional to the extent of the subcontract. The City shall not be obligated to pay or be liable for payment of any sums due which may be due to any sub-contractor.

5. Termination of Procurement. The sale contemplated by this Agreement may be canceled by the City prior to acceptance by the City whenever for any reason and in its sole discretion the City shall determine that such cancellation is in its best interests and convenience.

6. Termination of Professional Services. The Professional or the City may terminate the Professional Services component of this Agreement, without specifying the reason therefor, by giving notice, in writing, addressed to the other party, specifying the effective date of the termination. No fees shall be earned after the effective date of the termination. Upon any termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material prepared by the Professional pursuant to this Agreement shall become the property of the City. Notwithstanding the above, Professional shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this

Agreement by the Professional, and the City may withhold any payments to the Professional for the purposes of set-off until such time as the exact amount of damages due the City from the Professional may be determined.

7. Independent Contractor Status. It is expressly acknowledged and understood by the parties that nothing contained in this agreement shall result in, or be construed as establishing an employment relationship. Professional shall be, and shall perform as, an independent Contractor who agrees to use his or her best efforts to provide the said services on behalf of the City. No agent, employee, or servant of Professional shall be, or shall be deemed to be, the employee, agent or servant of the City. City is interested only in the results obtained under this contract. The manner and means of conducting the work are under the sole control of Professional. None of the benefits provided by City to its employees including, but not limited to, workers' compensation insurance and unemployment insurance, are available from City to the employees, agents or servants of Professional. Professional shall be solely and entirely responsible for its acts and for the acts of Professional's agents, employees, servants and subcontractors during the performance of this contract. Professional shall indemnify City against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax law, with respect to Professional and/or Professional's employees engaged in the performance of the services agreed to herein.

8. Indemnification. Professional agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, to the extent and for an amount represented by the degree or percentage such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the wrongful act, omission, error, professional error, mistake, negligence, or other fault of the Professional, any subcontractor of the Professional, or any officer, employee, representative, or agent of the Professional or of any subcontractor of the Professional, or which arises out of any workmen's compensation claim of any employee of the Professional or of any employee of any subcontractor of the Professional. The Professional agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Professional, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the City, its officers, or its employees, the City shall reimburse the Professional for the portion of the judgment attributable to such act, omission, or other fault of the City, its officers, or employees.

9. Professional's Insurance.

(a) Professional agrees to procure and maintain, at its own expense, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations

assumed by the Professional pursuant to Section 8 above. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Professional shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 8 above by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

(b) Professional shall procure and maintain, and shall cause any subcontractor of the Professional to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurance acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Professional pursuant to Section 8 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) *Workers' Compensation* insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and *Employers' Liability* insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) for each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this paragraph.

(ii) *Commercial General Liability* insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000.00) each occurrence and ONE MILLION DOLLARS ($1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

(iii) *Comprehensive Automobile Liability* insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000.00) each occurrence and ONE MILLION DOLLARS ($1,000,000.00) aggregate with respect to each Professional's owned, hired and non-owned vehicles assigned to or used in performance of the Scope of Work. The policy shall contain a severability of interests provision. If the Professional has no owned automobiles, the requirements of this Section shall be met by each employee of the Professional providing services to the City under this contract.

(iv) *Professional Liability* insurance with the minimum limits of ONE MILLION DOLLARS ($1,000,000) each claim and ONE MILLION DOLLARS ($1,000,000) aggregate.

(c) The policy or policies required above shall be endorsed to include the City and the City's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers or employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by Professional. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Professional shall be solely responsible for any deductible losses under any policy required above.

(d) The certificate of insurance provided to the City shall be completed by the Professional's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this contract and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(e) Failure on the part of the Professional to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which City may immediately terminate this contract, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by City shall be repaid by Professional to City upon demand, or City may offset the cost of the premiums against monies due to Professional from City.

(f) City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(g) The parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently $350,000.00 per person and $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to City, its officers, or its employees.

10. City's Insurance. The parties hereto understand that the City is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City of Aspen Risk Management Department and are available to Professional for inspection during normal business hours. City makes no representations whatsoever with respect to specific coverages offered by CIRSA. City shall provide Professional reasonable notice of any changes in its membership or participation in CIRSA.

11. Completeness of Agreement. It is expressly agreed that this agreement contains the entire undertaking of the parties relevant to the subject matter thereof and there are no verbal or written

representations, agreements, warranties or promises pertaining to the project matter thereof not expressly incorporated in this writing.

12. Notice. Any written notices as called for herein may be hand delivered or mailed by certified mail return receipt requested to the respective persons and/or addresses listed above.

13. Non-Discrimination. No discrimination because of race, color, creed, sex, marital status, affectional or sexual orientation, family responsibility, national origin, ancestry, handicap, or religion shall be made in the employment of persons to perform services under this contract. Professional agrees to meet all of the requirements of City's municipal code, Section 13-98, pertaining to non-discrimination in employment.

14. Waiver. The waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of this Agreement can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by Professional to which the same may apply and, until complete performance by Professional of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

15. Execution of Agreement by City. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. Notwithstanding anything to the contrary contained herein, this Agreement shall not be binding upon the City unless duly executed by the Mayor of the City of Aspen (or a duly authorized official in his absence) following a Motion or Resolution of the Council of the City of Aspen authorizing the Mayor (or a duly authorized official in his absence) to execute the same.

16. Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101.

(a) Purpose. During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the City of Aspen, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a subcontractor who knowingly hires with an illegal alien to perform work under the contract. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

(b) Definitions. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the City of Aspen.

"Basic Pilot Program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public

Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

"Public Contract for Services" means this Agreement.

"Services" means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

(c) By signing this document, Professional certifies and represents that at this time:

(i) Professional shall confirm the employment eligibility of all employees who are newly hired for employment in the United States; and

(ii) Professional has participated or attempted to participate in the Basic Pilot Program in order to verify that new employees are not illegal aliens.

(d) Professional hereby confirms that:

(i) Professional shall not knowingly employ or contract new employees without confirming the employment eligibility of all such employees hired for employment in the United States under the Public Contract for Services.

(ii) Professional shall not enter into a contract with a subcontractor that fails to confirm to the Professional that the subcontractor shall not knowingly hire new employees without confirming their employment eligibility for employment in the United States under the Public Contract for Services.

(iii) Professional has verified or has attempted to verify through participation in the Federal Basic Pilot Program that Professional does not employ any new employees who are not eligible for employment in the United States; and if Professional has not been accepted into the Federal Basic Pilot Program prior to entering into the Public Contract for Services, Professional shall forthwith apply to participate in the Federal Basic Pilot Program and shall in writing verify such application within five (5) days of the date of the Public Contract. Professional shall continue to apply to participate in the Federal Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Professional is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.

(iv) Professional shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.

(v) If Professional obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with a new employee who is an illegal alien, Professional shall:

(1) Notify such subcontractor and the City of Aspen within three days that Professional has actual knowledge that the subcontractor has newly employed or contracted with an illegal alien; and

(2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the new employee who is an illegal alien; except that Professional shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

(vii) If Professional violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City of Aspen may terminate the Public Contract for Services. If the Public Contract for Services is so terminated, Contractor shall be liable for actual and consequential damages to the City of Aspen arising out of Professional's violation of Subsection 8-17.5-102, C.R.S.

(ix) If Professional operates as a sole proprietor, Professional hereby swears or affirms under penalty of perjury that the Professional (1) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (2) shall comply with the provisions of CRS 24-76.5-101 *et seq.*, and (3) shall produce one of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Agreement.

16. Warranties Against Contingent Fees, Gratuities, Kickbacks and Conflicts of Interest.

(a) Professional warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Professional for the purpose of securing business.

(b) Professional agrees not to give any employee of the City a gratuity or any offer of employment in connection with any decision, approval, disapproval, recommendation,

preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to this Agreement, or to any solicitation or proposal therefore.

(c) Professional represents that no official, officer, employee or representative of the City during the term of this Agreement has or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof, except those that may have been disclosed at the time City Council approved the execution of this Agreement.

(d) In addition to other remedies it may have for breach of the prohibitions against contingent fees, gratuities, kickbacks and conflict of interest, the City shall have the right to:

1. Cancel this Purchase Agreement without any liability by the City;
2. Debar or suspend the offending parties from being a Professional, contractor or subcontractor under City contracts;
3. Deduct from the contract price or consideration, or otherwise recover, the value of anything transferred or received by the Professional; and
4. Recover such value from the offending parties.

17. Fund Availability. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement contemplates the City utilizing state or federal funds to meet its obligations herein, this Agreement shall be contingent upon the availability of those funds for payment pursuant to the terms of this Agreement.

18. General Terms.

(a) It is agreed that neither this Agreement nor any of its terms, provisions, conditions, representations or covenants can be modified, changed, terminated or amended, waived, superseded or extended except by appropriate written instrument fully executed by the parties.

(b) If any of the provisions of this Agreement shall be held invalid, illegal or unenforceable it shall not affect or impair the validity, legality or enforceability of any other provision.

(c) The parties acknowledge and understand that there are no conditions or limitations to this understanding except those as contained herein at the time of the execution hereof and that after execution no alteration, change or modification shall be made except upon a writing signed by the parties.

(d) This Agreement shall be governed by the laws of the State of Colorado as from time to time in effect.

19. Electronic Signatures and Electronic Records This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement binding on the Parties, notwithstanding the possible event that all Parties may not have signed the same counterpart. Furthermore, each Party consents to the use of electronic signatures by either Party. The Scope of Work, and any other documents requiring a signature hereunder, may be signed electronically in the manner agreed to by the Parties. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic documents, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies each of which shall be deemed an original on the date first written above.

CITY OF ASPEN, COLORADO:

_____
[Signature]

By: _____
[Name]

Title: _____

Date: _____

PROFESSIONAL:

_____
[Signature]

By: _____
[Name]

Title: _____

Date: _____

Approved as to form:

_____
City Attorney's Office

EXHIBIT A PROFESSIONAL SERVICES AGREEMENT

EXHIBIT B PROFESSIONAL SERVICES AGREEMENT

Fee Schedule